

**Re: Request Under Freedom of Information Act  
(Expedited Processing & Fee Waiver/Limitation Requested)**

To Whom It May Concern:

Black Coat Media (“BCM”), a nationwide media organization, hereby files this Freedom of Information Act (“FOIA”) request (the “Request”) for public records. Due to the compelling and urgent need of this non-profit media organization which is primarily engaged in disseminating information concerning actual or alleged government activity, at no cost to the public, BCM is requesting expedited processing. BCM hereby requests a determination on said expedition within 10 days, under 5 U.S.C. § 552(a)(6)(E)(v)(II).

Further, a waiver or reduction of fees under 5 U.S.C. § 552(a)(4)(A)(iii), 5 U.S.C. § 552(a)(4)(A)(ii)(II), and/or 5 U.S.C. § 552(a)(4)(A)(ii)(III) is also requested as said records are likely to contribute significantly to the public understanding of the operations or activities of the government, are not primarily made in the commercial interest of the requester, and because BCM qualifies as a representative of the news media.

**I. DEFINITIONS**

“BLEO” shall mean any Biscayne National Park Law Enforcement Officer or Officers, singly and/or collectively, including their supervising or managerial chain(s) of command, assistant(s), secretary(s) and/or other associated personnel.

“AUSA” shall mean any Assistant United States Attorney, United States Attorney, or any other investigator/prosecutor working for and/or on behalf of the United States Department of Justice (“DOJ”).

“Document” shall be given its broadest possible meaning, and shall denote the original or, if unavailable, a copy of the original, in draft or final form, including “redlined” revisions of any written, typed, printed, recorded, computerized, sorted, or graphic matter, however produced, animated, stored or reproduced, and of every kind and description. The term “document(s)” shall include but not necessarily be limited to contracts, agreements, drawings, specifications, sketches, letters, correspondence, messages, notes, memoranda, agreements, modifications, change orders, unilateral changes, electronic mail (e-mails), text messages, instant messages or other communications, records of

telephone conversations, books, records, confirmations, drafts, notes, work papers, bills, ledgers, status reports, diaries, daily reports, minutes of meetings, journals, entries in journals, personal work papers, personal work files, diaries, logs, punchlists, transmittals, submittals, financial statements, audit reports, financial data, status reports, calendars, schedules, studies, summaries, reports, charts, books, drawings, diagrams, exhibits, video tapes, audio recordings, photographs, movies, tapes, transcripts, purchase orders, subcontracts, amendments, proposals, estimates, data sheets, computer printouts, computer diskettes or drives, compact disks (CDs), optical disks, whether sent or received, databases, computer programs, all other records kept by electronic, photographic or mechanical means and all copies or reproductions thereof which are different in any way from the original. The term “document” shall mean all of the above non-exempt records or portions thereof which are in your custody, possession, and/or control. The term “document(s)” shall also from here forth be synonymous with the term “record(s)”

## **II. BACKGROUND**

Over the last several years, several of our correspondents and/or sources have continually overheard comments made in public, by Biscayne National Park (“BNP”) employees, discussing allegations of a deeply disturbing nature. The overheard hearsay includes allegations of possible theft or misuse of government resources and/or property, obstruction of justice, witness tampering and/or retaliation, racketeering, whistle blower retaliation, cheating, as well as other general allegations of mismanagement, waste, fraud and/or abuse. Due to fear of further unlawful retaliation by BLEOs, our correspondents and sources will remain anonymous.

In addition, BNP repeatedly discusses closing portions of the park to fishing activities. An oft made argument in opposition is that if there were sufficient law enforcement monitoring of the resources, closures would not be needed. The requested information on this issue of public concern will either help support or squelch this continual argument made by many park stakeholders.

In an abundance of precaution, and to avoid further retaliatory witch hunts and/or fishing expeditions, you are advised that no BNP employees, interns and/or volunteers have knowingly and/or willfully made any statements to BCM. Further, it is assumed BNP’s Public Information Officer (“PIO”) will not be honest and forthcoming in answering questions, as well as it is assumed that BNP employees and/or BLEOs will not be granted permission to be interviewed by BCM.

Therefore, BCM feels this Request is the only mechanism by which to obtain critical information of great public concern. For the reasons given herein, expediting the Request and the waiving of fees is properly and lawfully requested.

### **III. REQUESTED RECORDS/DOCUMENTS**

#### **A) DOCUMENTS RELATED TO THEFT/MISUSE OF RESOURCES**

- 1) BNP policy for lunch breaks and taking extended multi-hour breaks. Please provide documents, if they exist, showing BLEOs are not subject to 18 U.S.C. § 641 or have been provided a waiver from policy or statute.
- 2) BNP policy for taking park vessels outside of park boundaries for personal business. Please provide all documents, if they exist, showing that BLEOs have a waiver from policy.
- 3) GPS logs for all BLEO vessels, for the last 5 years.
- 4) Timesheets for all BLEOs for any day they were on and/or used a vessel, for the last 5 years.

#### **B) DOCUMENTS RELATED TO MANAGEMENT OF RESOURCES**

- 5) A listing of all resource-related citations and warnings written by BLEOs, including records of those who have opted for education to reduce a fine or sentence, in the last 5 years.
- 6) A listing of all boating-related citations and/or warnings written by BLEOs, in the last 5 years.
- 7) A listing of all training or requests for training by BLEOs related to resource conservation operations, in the last 5 years.
- 8) A listing of all motor vehicle/traffic citations and/or warnings written by BLEOs, in the last 5 years.
- 9) A listing of all training or requests for training by BLEOs for traffic enforcement operations, or other driving safety related training, in the last 5 years.

- 10) A listing of all law enforcement related dives performed by BLEOs, in the last 5 years.
- 11) A listing of dive training or requests for dive training by BLEOs, in the last 5 years.
- 12) Weekly hours of operation logs for each BLEO vessel, in the last 5 years
- 13) BLEO activity logs during the Hurricane Irma response.

**C) DOCUMENTS RELATED TO BLEO EMPLOYMENT HISTORY**

- 14) Copies of the oath of office for all BLEOs.
- 15) Copies of any BLEO Surety or Garrity Bond(s).
- 16) All *Giglio* and/or *Brady* evidence on any BLEO, including all previous or current law enforcement experience.
- 17) All *Bivens* and/or 42 U.S.C. § 1983 actions filed against any BLEO, including all previous or current law enforcement experience.
- 18) All policy violations or disciplinary records for any BLEO, including all previous or current law enforcement experience.
- 19) Copy of all other documents related to any investigation of any BLEO for any misconduct including but not limited to waste, fraud and abuse and/or cheating, in the last 5 years.

**D) DOCUMENTS RELATED TO RETALIATION**

- 20) All complaints and/or grievances filed against and/or filed by any BLEO, in the last 5 years.
- 21) All communications and documents sent from any BLEO which names any resource management personnel, intern or volunteer, from January 1<sup>st</sup>, 2017 to present.

- 22) Records of all interrogations/investigations/questionnaires taken, initiated or submitted by BLEOs to any BNP employee, intern and/or volunteer, in the last 2 years.
- 23) All FOIA requests filed by and/or related to BLEOs, and the subsequently produced documents, in the last 2 years.
- 24) All documents related to violations, citations, arrest, prosecutions initiated by BLEOs against any BNP employee, intern and/or volunteer, in the last 5 years.
- 25) BNP retaliation policy and/or whistle blower policy.
- 26) All records supporting any quotations and/or statements made by any BNP employee, intern or volunteer which has been subsequently cited by any BLEO in their defense or complaint against, or investigation of and/or retaliation of any other BNP employee, intern or volunteer.
- 27) BNP disciplinary policy on cheating during testing and/or training.
- 28) Records, if they exist, showing that any AUSA has been made aware of the possible Brady/Giglio violations of BLEOs who have been shown to have compromised integrity by cheating on any test or training, or through making other false statements.
- 29) For the last ten computer-based trainings completed by each BLEO, a listing of the actual (elapsed) time taken to complete the training and the amount of time credited for the training.
- 30) All records pertaining to any BLEO requesting corrections for, or reporting falsification of, trainings due to the elapsed training time being less than the credited time for any training in the last 5 years.

#### **IV. APPLICATION FOR EXPEDITED PROCESSING**

BCM requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E). There is a "compelling need" for these records, as defined in the statute, because the information requested is "urgent[ly]" needed by an organization primarily engaged in disseminating information "to inform the public concerning actual or alleged Federal Government activity."

**A. *BCM is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.***

BCM is "primarily engaged in disseminating information" within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>1</sup> Obtaining information about government activity, analyzing that information, and widely disseminating that information to the press and public are critical and substantial components of BCM's work and are among its primary activities. See *ACLU v. DOJ*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" to be "primarily engaged in disseminating information").<sup>2</sup>

BCM publishes articles and provides news updates on social media and through daily live broadcast. These publications and broadcast include descriptions and analysis of information obtained through FOIA requests. BCM also issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news, and attorneys affiliated with BCM are interviewed for stories about documents released through BCM's FOIA requests.

Similarly, BCM publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost. BCM's national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.

BCM publishes a widely read Facebook page where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. BCM creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. BCM also publishes, analyzes, and disseminates information through its website, [www.blackcoatmedia.org](http://www.blackcoatmedia.org). The website addresses

---

<sup>1</sup> See also 5 C.F.R. § 2604.301(e)(2)(ii); 28 C.F.R. § 16.5(e)(ii); 41 C.F.R. § 105-60.402-2(c)(2).

<sup>2</sup> Courts have found that similarly situated organizations with similar missions that engage in information-dissemination activities similar to BCM are "primarily engaged in disseminating information." See, e.g., *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many documents relating to the issues on which BCM is focused. BCM's website also serves as a clearinghouse for news of recent civil rights and public records cases, as well as analysis about case developments. Through these pages, and with respect to each specific civil liberties issue, BCM provides the public with educational material, recent news, analyses of relevant Judicial as well as legislative and executive branch actions, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.

BCM plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the requester plans to disseminate the information disclosed as a result of this Request to the public at no cost.

***B. The records sought are urgently needed to inform the public about actual or alleged government activity.***

These records are urgently needed to inform the public about actual or alleged government activity. See 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>3</sup> Specifically, the requested records relate to possible theft of government resources, retaliation and/or whistle blower allegations, mismanagement of resources, failure to conserve natural and/or historic resources, and/or other ethical conflicts raises unprecedented questions of enormous public concern.

Given the foregoing, BCM has satisfied the requirements for expedited processing of this Request.

**V. APPLICATION FOR WAIVER OR LIMITATIONS OF FEES**

BCM requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).<sup>4</sup> BCM also requests a waiver of search fees on the grounds that BCM qualifies as a

---

<sup>3</sup> See also 5 C.F.R. § 2604.301(e)(2)(ii); 28 C.F.R. § 16.S(e)(ii); 41 C.F.R. § 105-60.402-2(c)(2).

<sup>4</sup> See also 5 C.F.R. § 2604.503(c); 28 C.F.R. § 16.1 O(k)(l); 5 C.F.R. § 294.109(f); 41 C.F.R. § 105-60.402-2(c)(2).

"representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

**A. *The Request is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of BCM.***

As discussed above, news accounts underscore the substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention devoted to the issues of theft of government resources, law enforcement retaliation and/or whistle blower allegations, mismanagement of resources, failure to conserve natural and/or historic resources, and/or other ethical conflicts the records sought will significantly contribute to public understanding of these issues of profound public importance. Especially because little specific information about these issues as specifically related to BNP is publicly available, the records sought are certain to contribute significantly to the public's understanding of these issues, particularly as related to BNP.

BCM is not filing this Request to further its commercial interest. As described above, any information disclosed by BCM as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending the FOIA. See *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters." (quotation marks omitted)).

**B. *BCM is a representative of the news media and the records are not sought for commercial use.***

BCM also requests a waiver of search fees on the grounds that BCM qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). BCM meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(III);<sup>5</sup> see also *Nat'l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing

---

<sup>5</sup> See also 5 C.F.R. § 2604.103; 28 C.F.R. § 16.10(b)(6); 5 C.F.R. § 294.103(c); 41 C.F.R. § 105-60.305-1 (i).

documents, "devises indices and finding aids," and "distributes the resulting work to the public" is a "representative of the news media" for purposes of the FOIA); *Serv. Women's Action Network v. DOD*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. DOJ*, No. C09-0642RSL, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience"); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be "primarily engaged in disseminating information"). BCM is therefore a "representative of the news media" for the same reasons as it is "primarily engaged in the dissemination of information."

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to BCM's to be "representatives of the news media" as well. See, e.g., *Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10-15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a "representative of the news media" for purposes of the FOIA); *Nat'l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding Judicial Watch, self-described as a "public interest law firm," a news media requester).<sup>6</sup>

On account of these factors, fees associated with responding to FOIA requests are regularly waived for other organizations such as the ACLU who are similarly situated to BCM as a "representative of the news media."<sup>7</sup> As was true in those instances, BCM meets the requirements for a fee waiver here.

---

<sup>6</sup> Courts have found these organizations to be "representatives of the news media" even though they engage in litigation and lobbying activities beyond their dissemination of information I public education activities. See, e.g., *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat'l Sec. Archive*, 880 F.2d at 1387; see also *Leadership Coreference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53-54.

<sup>7</sup> In May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also, in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to "national security letters" issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the fee-waiver request related to the same FOIA request issued to the DOJ. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request for documents relating to the detention, interrogation, treatment, or

\* \* \*

Pursuant to applicable statutes and regulations, BCM expects a determination regarding expedited processing within 10 days. See 5 U.S.C. § 552(a)(6)(E)(ii); 5 C.F.R. § 2604.305(a)(3); 28 C.F.R. § 16.5(e); 5 C.F.R. § 294.108(f); 41 C.F.R. § 105-60.305-10(d).

If the Request is denied in whole or in part, BCM asks that you justify all deletions by reference to specific exemptions to the FOIA. BCM expects the release of all segregable portions of otherwise exempt material. BCM reserves the right to appeal a decision to withhold any information and/or deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

Felipe Hemming  
Black Coat Media  
419 Main Street Suite 262  
Huntington Beach, California 92648  
888.571.5535 (PHONE)  
949.258.5963 (FAX)  
[Felipehemming@blackcoatmedia.org](mailto:Felipehemming@blackcoatmedia.org)

---

prosecution of suspected terrorists. Likewise, in December 2008, the DOJ granted the ACLU a fee waiver with respect to the same request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU on a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The DOJ did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies-the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the DOJ Office of Information and Privacy-did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi).

Dated: October 11<sup>th</sup>, 2019.

Respectfully,

---

Felipe Hemming  
President  
Black Coat Media  
419 Main Street Suite 262  
Huntington Beach, California 92648  
888.571.5535 (PHONE)  
949.258.5963 (FAX)  
[Felipehemming@blackcoatmedia.org](mailto:Felipehemming@blackcoatmedia.org)